

AGREEMENT

THIS AGREEMENT is made and entered into this 16th day of December, 1993, by and between BUREAU OF LAND MANAGEMENT, FISH AND WILDLIFE SERVICE and the NATIONAL PARK SERVICE, all within the UNITED STATES DEPARTMENT OF THE INTERIOR (hereinafter collectively referred to as the "Interior Bureaus") represented by the officers executing this Agreement on their behalf, and the LAS VEGAS VALLEY WATER DISTRICT and the SOUTHERN NEVADA WATER AUTHORITY (hereinafter collectively referred to as "the Authority"),

RECITALS

A. The Las Vegas Valley Water District is a quasi-municipal corporation created as a governmental subdivision of the State of Nevada by an act of the State Legislature in 1947. The Las Vegas Valley Water District's service area encompasses all of Clark County. It provides water to customers in the City of Las Vegas, urban areas of Clark County, Jean, Searchlight and Mt. Charleston. The Southern Nevada Water Authority was created in 1991 to advance the water supply needs of its members. Its members are Big Bend Water District, City of Boulder City, City of Henderson, City of Las Vegas, City of North Las Vegas, Clark County Sanitation District and the Las Vegas Valley Water District.

B. The United States Department of the Interior, by and through the Bureau of Land Management, Fish and Wildlife Service and National Park Service, is mandated by Congress to manage, protect and preserve the lands and resources, including water rights, both federal reserved and state law based, of the United States that fall under its jurisdiction. A number of these lands

and resources occur within or in the vicinity of the Virgin River Valley in southeastern Nevada.

C. The Las Vegas Valley Water District filed Applications 54077 and 57643, and on behalf of the Southern Nevada Water Authority, Application 58591, to appropriate waters of the State of Nevada from the Virgin River. These applications were duly protested by the Interior Bureaus. On October 21, 1993, the Las Vegas Valley Water District assigned its interest in Applications 54077 and 57643 to the Southern Nevada Water Authority. The Southern Nevada Water Authority, as owner of record of the above applications, has the lawful authority to execute this Agreement, and to present its case before the Nevada State Engineer.

D. On August 3, 1993, the Nevada State Engineer set an administrative hearing on the above referred to applications to commence on November 15, 1993, and continue thereafter until testimony is concluded. The hearing date was subsequently changed to January 10, 1994.

E. The parties hereto are desirous of resolving the protests filed by the Interior Bureaus in the matter of the above stated water right applications pursuant to Chapter 533 of the Nevada Revised Statutes, but reserving unto the United States and the Interior Bureaus, all legal rights, of any kind, it possesses pursuant to or derived from Executive Orders, Acts of Congress, or regulations promulgated pursuant thereto.

NOW, THEREFORE, in consideration of the mutual undertaking of the parties, and for other good and valuable consideration, the parties do agree as follows:

1. The parties agree that a copy of this Agreement shall be submitted to the Nevada State Engineer prior to commencement of the administrative hearings scheduled to begin on January 10, 1993. At that time, the parties shall request, in writing, that the State Engineer include certain terms and conditions as part of the permit terms, in the event that he grants Applications 54077, 57643 and 58591, in total or in part.

2. In addition, the parties will request that the State Engineer state in writing, prior to the hearing, that he will include the specified permit terms and conditions (paragraphs 5-17 hereof), or incorporate this Agreement into the permit terms, should he grant Applications 54077, 57643 and 58591. A copy of the proposed request letter to the State Engineer is attached to this Agreement as Exhibit "A" and is made a part hereof. If the State Engineer does so state, then the Interior Bureaus, at their option, may attend the administrative hearings described above, but will present no issues or statements under NRS 533.370(3) requesting the Nevada State Engineer deny the applications for reasons found in Chapter 533 of Nevada Revised Statutes. If the State Engineer does not so state, the Authority agrees to request on the initial hearing date before the Nevada State Engineer that the State

Engineer incorporate paragraphs 5-17 or incorporate this Agreement into the permit terms should he grant Applications 54077, 57643 and 58591, in total or in part.

3. In the event the Nevada State Engineer grants Applications 54077, 57643 and 58591, in total or in part, the parties acknowledge that the Authority must obtain certain permits, licenses, easements and/or approvals from the United States or any other agency or entity that derives its authority pursuant to the laws of the United States. The Authority agrees to fully comply with any and all requirements of any such permit, license, easement and/or approval, as required by each particular agency or entity, pursuant to its authority as provided by federal laws, rules and regulations.

4. The Interior Bureaus will not actively participate in the proceedings concerning Applications 54077, 57643 and 58591 if the Nevada State Engineer agrees in writing prior to the hearing, or on the record at the hearing, to include paragraphs 5 through 17, inclusive, of this Agreement, or incorporate this Agreement, as terms and conditions of any permit issued to the Authority based on these applications. If the State Engineer does not agree to include terms and conditions as provided herein, and the Interior Bureaus wish to submit evidence, issues and statements, this Agreement may be terminated at the option of the Interior Bureaus.

STUDIES

5. The Authority understands that construction of the proposed diversion works and related facilities will require compliance with the Endangered Species Act (ESA) and other laws such as the Clean Water Act (CWA), and that such construction will require permits or other authorizations from one or more Interior Bureaus or other agency or entity, necessitating compliance with the National Environmental Policy Act (NEPA). It is further understood that significant environmental issues will be studied through the NEPA process and will most likely be addressed in the form of an Environmental Impact Statement (EIS).

6. In addition to the efforts undertaken by the Authority in complying with NEPA, ESA, and other laws such as the CWA, the Authority shall conduct other studies as may be requested by the Interior Bureaus as provided herein. These relate directly to potential impacts from the proposed diversion and/or construction of the proposed diversion works and related facilities, and actual impacts that occur after construction of such works and facilities. The studies to be conducted and the study proposals shall be as mutually agreed upon by the Authority and the Interior Bureaus (through the lead bureau to be designated by the Interior Bureaus) and may include, but not be limited to, determinations of the effects of stream flow (both existing (pre-diversion) flow regime and various flow scenarios considering the proposed diversion) upon

sediment transport and deposition, upon vegetation in and along water courses, and upon aquatic and terrestrial biota; and recommended mitigation and habitat compensation measures and recommended monitoring requirements.

7. Conflicts between the Authority and the Interior Bureaus regarding studies to be conducted and the technical aspects of studies and their interpretation shall be submitted to one or more mutually acceptable disinterested parties such as the United States Geological Survey, the National Academy of Science or the National Biological Survey for a scientific or technical opinion.

8. The Authority shall be responsible for funding all such studies except when Federal/State cooperative funds are available.

9. Subject to paragraph 10 below, such studies may begin at any time, once mutual agreement is reached or conflicts are otherwise resolved.

10. The Authority and Interior Bureaus shall allow sufficient time for the studies to be completed prior to the Authority initiating its diversion of water from the Virgin River related to the subject applications. However, once all approved studies have been initiated, the Authority and the Interior Bureaus shall exercise all reasonable diligence to complete such studies.

11. If any studies undertaken pursuant to paragraph 6 or monitoring conducted pursuant to paragraph 14 identify and recommend mitigation, including by-pass flows, or habitat

compensation in addition to that otherwise required pursuant to any applicable law or permit or authorization, the Authority shall implement any or all of such measures as requested by the Interior Bureaus, provided that if the Authority does not agree that such measures should be implemented, the request for mitigation or habitat compensation shall be submitted to the National Academy of Science or other mutually agreed to third party for a scientific or technical opinion. Upon receiving the opinion, the parties shall attempt to reach agreement on the requested mitigation or habitat compensation. If no Agreement is reached, the request for mitigation or habitat compensation shall be submitted to the Nevada State Engineer, with the request that he decide the issue.

12. The studies described above may be in addition to or in conjunction with any studies required to be conducted pursuant to any permits, licenses, easements and/or approvals as described in paragraph 3 above.

13. Notwithstanding anything else contained herein, the Authority is not required to perform any studies described herein, unless otherwise required by law, should the State Engineer deny the subject water right applications or the Authority chooses not to construct the diversion works and related facilities even if the State Engineer grants the subject applications. This Agreement is not intended to prohibit the Authority from continuing studies that are currently in progress or to initiate any studies on its own

volition, provided that such studies are not otherwise contrary to this Agreement.

MONITORING

14. The Authority shall develop, fund and implement a detailed monitoring plan based on the results of the studies and other relevant information acceptable to the Interior Bureaus and the State Engineer to monitor the effects of its proposed diversions. The plan shall become part of the terms and conditions of any permit issued by the State Engineer pursuant to the subject applications.

GENERAL PROVISIONS

15. This Agreement does not waive any authorities of the Interior Bureaus or the United States, including any other agency or bureau not specified above, nor relieves the Authority from complying with any federal laws, including, but not limited to, the National Environmental Policy Act, the Endangered Species Act of 1973, as amended, the Clean Water Act, the Federal Land Policy and Management Act, and any and all rules and regulations thereunder. It is the expressed intention of the parties that by entering into this Agreement, the Interior Bureaus and the United States are waiving no legal rights of any kind.

16. This Agreement does not waive any water rights or claims to water rights whether of record by the Interior Bureaus or the United States, or of the Authority, nor does it attempt to

recognize the validity of any water rights or claims to water rights.

17. This Agreement may be amended by mutual written agreement of the parties.

18. This Agreement may be terminated by mutual written agreement of the parties. In addition, this Agreement terminates when the Authority abandons its right to appropriate water from the Virgin River pursuant to any permits or certificates issued by the State Engineer pursuant to Applications 54077, 57643 or 58591 and the permits or certificates are cancelled by the State Engineer. Additionally, this Agreement terminates at such time as the Authority withdraws the applications, or the applications are denied by the State Engineer. Further, this Agreement terminates if the Authority successfully changes the point of diversion to a point downstream that would eliminate the need for this Agreement.

19. Each party shall designate a representative to receive notices and other information and to coordinate activities required by this Agreement. Within six (6) months of the date of execution of this Agreement, such representatives shall be named and provided in writing to the other party.

20. This Agreement represents the entire agreement of the parties.

21. The provisions of this Agreement are non-severable unless otherwise agreed to in writing by the parties.

22. The provisions of this Agreement shall inure to and bind the successors and assigns of the parties.

23. The parties hereto agree to comply with any and all equal opportunity laws, civil rights laws, together with executive orders and regulations pertaining thereto. The parties fully acknowledge that these requirements may be necessary should the Interior Bureaus fund, in total or in part, any studies described herein.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day of year first above written.

UNITED STATES DEPARTMENT OF THE INTERIOR

BUREAU OF LAND MANAGEMENT

By *Willy L. Longstreet*

Title: *Actg. Director*

FISH AND WILDLIFE SERVICE

By _____

Title: _____

22. The provisions of this Agreement shall inure to and bind the successors and assigns of the parties.

23. The parties hereto agree to comply with any and all equal opportunity laws, civil rights laws, together with executive orders and regulations pertaining thereto. The parties fully acknowledge that these requirements may be necessary should the Interior Bureaus fund, in total or in part, any studies described herein.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day of year first above written.

UNITED STATES DEPARTMENT OF THE INTERIOR

BUREAU OF LAND MANAGEMENT

By _____

Title: _____

FISH AND WILDLIFE SERVICE

By  _____

Title: Acting Regional Director

NATIONAL PARK SERVICE

By

Henry L. Gibrig

Title:

Regional Director, Western Region

SOUTHERN NEVADA WATER AUTHORITY

By

Paul J. Christensen

Paul J. Christensen

Title:

Chairman,

ATTEST:

Patricia Mulroy

Patricia Mulroy

Secretary

EXHIBIT "A"

Subject: Agreement Between the Department of the Interior Bureaus and the Las Vegas Valley Water District and Southern Nevada Water Authority concerning Application Nos. 54077, 57643 and 58591.

Dear Mr. Turnipseed:

Attached is an Agreement between the U.S. Department of the Interior protestants (Interior Bureaus) and the applicants, Las Vegas Valley Water District and Southern Nevada Water Authority, concerning resolution of the protests filed by the Interior Bureaus in the matter of water right Application Nos 54077, 57643 and 58591 to appropriate surface water from the lower Virgin River in southeastern Nevada. This Agreement is conditioned on inclusion of paragraphs 5 through 17 of the Agreement as part of the terms and conditions of any permit issued by you pursuant to the subject applications.

We request that you provide us a response to this letter stating whether you will so include these paragraphs as part of any permit terms and conditions issued pursuant to the subject applications, including any modifications you deem necessary. It is critical for the Interior Bureaus to know as far in advance as possible whether you will so include these terms and conditions. In the absence of such a statement from you we must continue to expend time and money to prepare for the hearing that is scheduled to begin in January, 1994.

We also request that if you provide us with a statement prior to the hearing that you will so include the specified paragraphs, but later decide not to include them in any permit issued, that the bureaus be allowed to present evidence concerning these applications prior to issuing any such permit; even after the close of the currently scheduled hearing.

Thank you in advance for your timely consideration of this matter.

Sincerely,